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In re Application of :
Schmitt, Achim :
U.S. Application No.: 09/242,014 :
PCT No.: PCT/US97/05008 :
International Filing Date: 27 March 1997 :
Priority Date: 30 March 1996 :
Attorney's Docket No.: CM1189Q :
For: DISPOSABLE ABSORBENT ARTICLE :
WITH WINGS PREDISPOSED :
TOWARDS THEIR IN-USE-POSITION :

DECISION ON
PETITION

This decision is issued in response to "Petition To Withdraw Erroneous Notice Of Abandonment Or Alternatively To Revive Unintentionally Abandoned Application" filed on 12 April 2000 which has been treated as a petition under 37 CFR 1.182. Applicant has been charged the required \$130 petition fee.

BACKGROUND

On 27 March 1997, applicant filed international application PCT/US97/05008 which claimed a priority date of 30 March 1996 and which designated the United States.

On 01 October 1997, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 30 September 1998.

On 30 September 1998, applicant filed a transmittal letter for entry into the national stage in the United States which included authorization to charge Deposit Account No. 16-2480 \$720 as the basic national fee. The transmittal letter noted that a copy of the international application was not required because the international application had been filed in the United States Receiving Office. The application was assigned United States application number 09/242,014.

On 28 April 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The Notification also informed applicant that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 19 January 2000, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States for failure to respond to the Notification Of Missing Requirements mailed on 28 April 1998.

On 12 April 2000, applicant filed the "Petition To Withdraw Erroneous Notice Of Abandonment Or Alternatively To Revive Unintentionally Abandoned Application" considered herein.

DISCUSSION

In the present petition, applicant asserts that he filed an executed declaration on 05 April 1999 (along with an authorization to charge counsel's Deposit Account for the \$130 surcharge). Applicant has attached a copy of this filing, including a return postcard bearing a receipt stamp dated 05 April 1999. However, a review of the transmittal letter and the return postcard reveals that these materials were not filed in the present application (09/242,014); rather, they were filed under application number (09/155,610). A review of the file has revealed that the declaration and transmittal letter filed by applicant on 05 April 1999 were present in application file number 09/155,610; these materials have been removed and placed in the proper file (09/242,014).

The Notification Of Missing Requirements and the Notification Of Abandonment were issued in this case because the applicant directed the declaration and surcharge to the wrong file. In order to correct this error, the present petition has been treated as a petition under 37 CFR 1.182 to correct the application number on the transmittal letter submitted with the declaration on 05 April 1999. Based on this correction, the declaration and surcharge are considered to have been filed in the present application on 05 April 1999. Because the declaration and transmittal letter filed on 05 April 1999 constitute a proper response to the Notification Of Missing Requirements, the Notification Of Abandonment mailed 29 January 2000, based as it was on a purported failure to respond to the Notification Of Missing Requirements, is appropriately withdrawn.

Applicant has attached to the petition a copy of a filing receipt mailed in application 09/155,610. This was addressed to counsel in the present application and identified the applicant as Achim Scmitt, the inventor here, but all the other information related to the application

properly identified as 09/155,610. This filing receipt is hereby vacated. Applicant here will receive a proper filing receipt for the present application in due course, after the mailing of the Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).

CONCLUSION

For the reasons above, the petition is **GRANTED** and the holding of abandonmet is hereby **WITHDRAWN**.

Deposit Account 16-2480 has been charged \$130 as the applicable petition fee.

All future correspondence relating to this application, the United States national stage of PCT/US97/05008, should be submitted under application number **09/242,014**.

This application has an international filing date of 27 March 1997 under 35 U.S.C. 363 and a date of 05 April 1999 under 35 U.S.C. 371(c) and 102(e).

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing, including the mailing of a Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).



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